IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 1114 of 1997

For Approval and Signature:

HONOURABLE MR.JUSTICE A.L.DAVE
HONOURABLE MR.JUSTICE BANKIM.N.MEHTA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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RAJESHKUAMR SURAJRAM PANDYA - accused(s)
Versus
STATE OF GUJARAT - Opponent(s)

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Appearance :
1.MR SP MAJMUDAR for accused(s) : 1,
2.MR HM PRACHCHHAK APP for Opponent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE A.L.DAVE

and

HONOURABLE MR.JUSTICE BANKIM.N.MEHTA

Date : 05/07/2006

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE BANKIM.N.MEHTA)

1. The appellant has preferred this appeal under

Section 374 (2) of the Code of Criminal Procedure, 1973 and challenged the judgment passed by the learned Addl. Sessions Judge, Junagadh in Sessions Case No. 58 of 1995 on 30rd September, 1997, convicting the accused for the offence punishable under Section 302 of the I.P. Code and sentencing him to undergo life imprisonment and to pay fine of Rs.500/-, in default thereof, to undergo rigorous imprisonment of nine months.

2. The facts emerging from the prosecution case, are that the accused was discharging his duty as S.R.P. Police Constable of S.R.P. Group-13 Company NO. 1 at Nava Patelvada at Veraval. Deceased Malde Jethalal Sadia was also discharging his duty as Police Constable with the accused and they were staying at Diamond Talkies at Veraval. On 19-12-1994 at about 9-30 p.m. when the complainant Jetharam Sadhuram Jat and Police Constable Santkumar Jat were taking their meal at Diamond Talkies, the accused came there holding his service rifle in his right hand and informed them that Malde Sadia is lying at the point as he had fired a bullet at him because he had picked up quarrel with him for 'chapati'. On hearing this Jetharam Sadhuram Jat, Santkumar Jat In-charge Atmaram and the accused went at Patelvada naka point and saw Malde Sidia lying unconscious on 'otla' with bullet injury in his chest. Meanwhile a mobile van of Veraval City came there. So, In-charge Atmaram and the accused took Malde Sadia to the hospital and Jetharam Sadhuram Jat stayed at the

place of incident. Thereafter, Jetharam Sadhuram Jat filed a complaint in respect of the incident before Veraval City Police Station which was registered as I – CR No. 209 of 1994 for the offence punishable u/s 302 of the I.P. Code and investigation was started. During the course of the investigation, statements of the witnesses were recorded and panchanama of scene of offence, panchanama of discovery of muddamal rifle and inquest panchnama were drawn. The dead body of Malde Sadia was sent for postmortem and the accused was arrested.

3. On completion of the investigation, the charge sheet was laid before the Judicial Magistrate, First Class, Veraval for the offence punishable u/s 302 of the I.P. Code. As the offence was exclusively triable by the Court of Sessions, the case was committed to the Sessions Court, Junagadh and the same was registered as Sessions Case No. 58 of 1995. Learned Assistant Sessions Judge, Junagadh framed charge Exh.6 against the accused for the offence punishable u/s 302 of the I.P. Code. It was read over and explained to the accused who pleaded not guilty to the charge and demanded trial. Therefore, the prosecution adduced evidence to prove the charge levelled against the accused.

4. On completion of recording of evidence by prosecution the learned trial Judge explained to the accused the incriminating circumstances appearing against him in the evidence. The accused was

explained the circumstances in the evidence appearing against him in his further statement recorded u/s 313 of the Code of Criminal Procedure, 1973. The accused in further statement denied having committed the offence of murder of Malde Sadia, but admitted that he received 303 rifle bearing Butt No. 755 on 9-12-1994. The accused also filed his written statement which is more or less written submissions in respect of the evidence adduced by the prosecution. The accused did not raise any specific defence except denying his involvement in the offence contending that he is innocent.

5. After hearing the learned Addl. Public Prosecutor and learned advocate for the accused, the learned trial Judge came to the conclusion that the prosecution has proved beyond reasonable doubt the charge levelled against the accused and convicted him for the offence punishable under Section 302 of the I.P. Code and sentenced him to undergo the sentence as mentioned hereinabove. Being aggrieved and dissatisfied with the said judgment, the accused has preferred the present appeal.

6. We have heard learned advocate Mr. S. P. Majmudar for the appellant and Mr. H.M. Prachchhak, learned A.P.P. for the respondent - State at length and in great detail. We have also perused the judgment of the trial court as well record and proceedings of the of case.

7. Learned advocate Mr. Majmudar submitted that the prosecution case is mainly based on so called extra judicial confession made by the appellant before the S.R.P. Police Constable P.W. 8 Santkumar. Such extra judicial confession is not admissible in evidence u/s 25 of the Indian Evidence Act, 1872 as extra judicial confession is a weak piece of evidence as it is not corroborated by other evidence and the witness has not given the exact words used in confession. He also submitted that the place where extra judicial confession allegedly made was a public place but no independent witness is examined to prove the confession and the witnesses before whom it is made are interested witnesses and therefore the conviction cannot be based on such confession. He also submitted that according to the prosecution after commission of the alleged offence, the appellant took the deceased to the hospital. This conduct of the appellant is not natural as an accused involved in the offence would not accompany the victim to the hospital. Therefore, extra judicial confession allegedly made by the accused cannot be relied on to connect the accused in commission of the offence. He further submitted that there was no place to store the weapon given to the accused at the relevant time and therefore any one could have used the weapon given to the appellant. Hence, the fact that the appellant used the muddamal weapon in committing the offence becomes doubtful. He also submitted that the complaint does not mention about the Butt number of the rifle and the evidence

adduced before the trial court indicates that there is discrepancy with regard to the number of the rifle as correct number of rifle is 17909 but the register indicates the number as 19909. Therefore, there is discrepancy as to which weapon was used in the commission of the offence. He submitted that medical evidence indicates that the injuries found on the dead body of the deceased were possible on account of suicide and therefore the appellant could not have been convicted for the offence of murder. He also submitted the prosecution has not proved that there was motive behind committing the offence. He further argued that in the alternative on sudden quarrel with the deceased due to grave and sudden provocation the appellant shot the fire which would amount to culpable homicide not amounting to murder. Therefore, the appellant could not have been convicted for the offence of murder punishable u/s 302 of the I.P. Code. In support of his submissions, he relied on number of decisions which will be discussed at appropriate place in the judgment.

8. Learned A.P.P. Mr. Prachchhak vehemently opposed the appeal and submitted that extra judicial confession of the appellant clearly indicates that he was involved in the commission of the offence of murder and such confession was not made before a Police Officer as the person before whom the confession is made was not an Investigating Officer of the case and therefore it would not

attract Section 25 of the Indian Evidence Act, 1872 and such confession would be admissible in the evidence. He submitted that the alleged discrepancy in Butt number of muddamal rifle has been corrected by adducing evidence and the accused has also admitted having received the rifle. He argued that the Report also indicates that the accused had used the weapon in the commission of the offence of murder and it is not the case of the appellant that the rifle was stolen, misplaced or misused by some other person. Therefore, the appellant cannot escape from his liability. He submitted that there is no evidence that the offence was committed in heat of moment on account of quarrel with the deceased. Hence, there is no question of grave and sudden provocation and so no lesser punishment could have been imposed and the trial court was justified in convicting the appellant for the offence of murder. Hence, no interference is warranted in the judgment and order of conviction passed by the trial court and the appeal is required to be dismissed.

9. The first contention raised by the appellant is with regard to rifle used in the commission of offence. According to the appellant he was allotted rifle bearing body No. 19099 and the rifle recovered bears body No.17909. Therefore, there is discrepancy in the rifle number and therefore the prosecution has failed to prove that the weapon used in the commission of offence belonged to the appellant.

10. The prosecution examined P.W. 13 Balsinh Amarsinh Solanki at Exh. 50 . The witness deposed that he had given 303 Rifle bearing No.755 to the accused and it was recorded at Sr. No.93 in the register Exh. 51 and the accused had passed receipt Exh.52. On perusal of Register Exh.51 it appears that rifle bearing butt No. 755 was allotted to the appellant but it does not indicate body number of the rifle. Whereas receipt Exh. 52 indicates that rifle bearing butt No. 755 and body No. 19909 was received by the appellant.

11. The recovery panchanama Ex. 29 indicates that the rifle recovered from the appellant was bearing body No. 17909. Therefore, there is discrepancy in body number of the rifle used in the commission of offence. The prosecution examined the panchas to prove recovery panchnama Exh. 29 but the panchas turned hostile. Therefore, it was proved through Investigating Officer P.W. 15 Muljibhai Kalyanjibhai Exh. 61. In order to clarify this discrepancy in the body number of the rifle the prosecution examined P.W. 16 Rajghar Dagobhai Mali at Exh. 71. The witness was the Store-keeper who supplied arms and ammunition to the members of the S.R.P. Group. He deposed that rifle bearing butt No.755 and body No.17909 was allotted to the accused. He also deposed that 303 rifle bearing butt No. 755 and body No. 17909 is registered in the record and as per the inspection report rifle bearing butt No. 755 is having body No.17909. He also deposed that there is

no rifle bearing body No.19909. The witness has been cross-examined but nothing has been elicited.

12. The prosecution produced weapon register at Exh. 72. It indicates that out of 303 rifles allotted to S.R.P. Group – 13 of which the appellant was a member, rifle bearing butt No.755 was bearing body No.17909. The issue voucher Exh. 73 indicates that S.R.P. Group No.13 was allotted 134 rifles. The weapon sheet No. 59 Exh. 74 indicates that 303 rifle butt No. 755 was bearing body No. 17909. The inspection register Exh. 75 also indicates that rifle bearing butt No. 755 and body No.17909 was registered at Sr. No. 85 in the register. In view of this evidence, it becomes clear that there was error in recording the body number of the weapon and instead of No.17909 it was recorded as 19909. However the record Exh.51 indicates that rifle bearing butt no.755 was alloted to the appellant which the appellant has also admitted. The evidence indicates that the rifle recovered from the appellant was used in the commission of the offence. Therefore, though there is discrepancy in recoding of body number in the record it becomes clear that the rifle bearing butt No.755 was allotted to the appellant. This fact is also admitted by the appellant. Therefore, the discrepancy in body number of the rifle is clarified by the prosecution and it is proved that the weapon used in the offence was allotted to the appellant and therefore there is no discrepancy in respect of the identification of weapon used in commission of

offence.

13. The prosecution examined P.W. 12 Ramanbhai Kacharabhai Parmar, the Scientific Officer of F.S.L. at Exh. 46. He deposed that 22 muddamal articles were sent to them for examination and report Exh. 49 was prepared after examination. It appears from the report that bullet was fired from the muddamal rifle which was recovered from the appellant. The inquest panchnama Exh. 21 also indicates that the injuries were caused by muddamal rifle. The case paper Exh. 19 indicates that Malde Sadia was admitted in the hospital with the history of bullet injury fired from service rifle by S.R.P. man.

14. In view of this evidence, it is established beyond reasonable doubt that the weapon used in the commission of offence belonged to the appellant. The F.S.L. Report Exh. 49 indicates that the muddamal rifle was in working condition and was bearing body number 17909. It also indicates that the muddamal article rifle was used for firing and the pieces of bullet recovered from the place of incident were fired from the muddamal rifle. In view of this, it is clear that the muddamal rifle was used in the commission of the offence of murder of Malde Sadia. Therefore, the submission that there is discrepancy in muddamal rifle cannot be accepted. One more fact is required to be considered that according to the appellant there was no store-room at the relevant time to store or keep the weapons

allotted to the S.R.P. Personnel and therefore the weapons could have been used by any one. This submission also cannot be accepted because the appellant has never complained that his rifle was either stolen, misplaced or misused by any one. Therefore, on reappreciation of the evidence, we are of the view that the prosecution proved beyond reasonable doubt that the rifle by which the offence was committed was allotted (belonged) to the appellant and the fire was shot from the muddamal article rifle.

15. The prosecution examined P.W. 1 Dr. Bhimjibhai Karshanbhai Fulbariya at Exh. 18 who initially examined the victim when he was taken to the hospital but as the victim succumbed to the injuries before any treatment could be given, performed postmortem examination of the dead body. He found the following injuries on the dead body of the deceased.

i. A punctured wound on the right side of the chest near the right sterno-coastal joint region ½ cm. x ½ cms circular in shape penetrating into the right thoracic cavity. The margins are penetrated. The skin is blackened in area of 1 cm x 1 cm. around the wound. On pressing, there is oozing of dark blood from the wound (Entrance wound). Subcutaneous haemorrhage under the wound is present.

ii. A lacerated wound on the right side of the back of the chest 5 cm. x 5 cm x 3 cm. Right

thoracic cavity deep. The margins are averted and irregular. The dark blood is oozing from the wound (exit wound)

iii. Right 6th, 7th and 8th ribs are palpated and fractured.

Internal Injuries :

i. Punctured wound on the right side of the chest which is penetrating in thoracic cavity. The right sided 6th sterno coastal cartilage is penetrated with the wound. Right 6th, 7th and 8th ribs are fractured. Posteriorly.

ii. Right pleura is lacerated on right inferior lobe of the right lung 5 cms x 5 cms.

iii. NAD/ The right thoracic cavity is full of blood. There is lacerated wound on the inferior lobe of the right lung. 5 cm x 5 cm x whole lobe deep with dark blood clot. The lower lobe of the right lung is collapsed and blackened.

16. P.W. 1 Dr. Bhimjibhai deposed that such injuries were possible by fire of a shot from a distance of 10 to 15 feet and such injuries were possible by fire from muddamal rifle. He also deposed that cause of death was shock due to cardio respiratory arrest resulted from massive blood loss and right lung injury and fracture of the right 6th, 7th and 8th ribs caused by bullet fired from rifle. In

the cross-examination by putting a question that such injuries were possible in case of suicide to which the witness has answered in affirmative; there is no other cross-examination. It is not a defence that the deceased committed suicide. Therefore, the suggestion put in the cross-examination has no value. The postmortem report Exh.23 indicates the injuries and cause of death. In view of above evidence, it is established beyond reasonable doubt that the death of Malde Sadia was homicidal in nature.

17. The appellant has raised a contention with regard to admissibility of extra judicial confession. It was submitted by the learned advocate for the appellant that extra judicial confession was allegedly made before First Grade Constable in S.R.P. Company No.1 P.W. 7 Jetharam Sadhuram Jat Exh. 34 and therefore the same is not admissible in evidence u/s 25 of the Indian Evidence Act, 1872. In this regard Apex Court in the case of **State of Gujarat Vs. Anirudhsing and another reported in AIR 1997 SC 2780**, while deciding the issue as to whether the Reserve Police Officer under State Reserve Police Force Act is a Police Officer and Officer-in-charge of police station under the Bombay Police Act, held that **the police personnel appointed under State Reserve Police Force Act is not a police officer for the provision of Chapter XII of the Code of Criminal Procedure Code and therefore Section 25 of the Indian Evidence Act, 1872 would not attract.** In the case on hand, the person before whom the extra

judicial confession was made by the appellant is not a Police Officer but Police Constable of State Reserve Police, Gujarat appointed under the State Reserve Police Force Act and therefore the provisions of Section 25 of the Indian Evidence Act, 1872 would not be attracted. Hence, the submission of the learned advocate for the appellant that the extra judicial confession made by the appellant is hit by Section 25 of the Indian Evidence Act, cannot be accepted.

18. Another contention raised by the learned advocate for the appellant is that the extra judicial confession of the appellant cannot be relied on to convict him as there is no other corroborative evidence to prove that it was made by the accused before the witness. According to the prosecution, the accused made the extra judicial confession before P.W.7 Jetharam Sadhuram when the witness was taking meal with P.W. 9 Santkumar Jagumal. Therefore, evidence of both these witnesses would be material to consider whether extra judicial confession was made by the accused. P.W. 7 Jetharam Sadhuram Jat Exh. 34 stated in his deposition that on 19-12-1994 at about 9-30 p.m. when he and Santkumar had finished their meal the accused came at Diamond Talkies with rifle in his hand and told them that Malde Sadia had quarrel with him for 'chapati', so he had fired a shot from his rifle and Malde Sadia is lying there; that he took the rifle from the accused and he along with Atmaram Thakore,

Santkumar Jat and accused went to Nava Patelvada where Malde Sadia was ling unconscious with bullet injury in the chest. He also deposed that Malde Sadia was taken to government hospital at Veraval by Atmaram Thakore and he remained at the place of incident and thereafter filed complaint Exh. 59. The witness has been cross-examined at length. But there is no cross-examination with regard to extra judicial confession except that on the day of the incident when the accused came to them there was movement of public as it was show time and due to noise one was not audible speaking from a distance. There is no evidence that the accused made the extra judicial confession from a distance. Even the cross-examination does not indicate that the accused made judicial confession from a distance and therefore was not audible. The F.I.R. Exh. 59 also indicates that the accused made extra judicial confession before the informant. It is true that such confession is a weak piece of evidence but it appears that the confession was made immediately after the incident by the accused before his colleagues. There is nothing unusual that the accused reposed confidence in these witnesses for making extra judicial confession as they were colleagues and discharging duty together. The extra judicial confession clearly indicates the motive for the commission of offence. The witness gave the exact words used by the accused - appellant while making the confession. The medical evidence of P.W. 1 Dr. Bhimjibhai Exh. 18 and P.M. Note Exh. 23 support the

confession made by the accused that fire was shot from rifle at the deceased which caused the injury on the chest. Leaned advocate for the appellant failed to demonstrate that the evidence of this witness is not credible. There is no cross-examination to indicate that the evidence of the witness is not trustworthy and his deposition cannot be relied on. In view of this evidence, it is clear that the accused made extra judicial confession before the witness reposing confidence in him as he was colleague giving details about the incident and motive.

19. The prosecution examined P.W. 8 Santkumar Jagumal Jat at Exh. 38 who was taking meal with P.W. 7 Jetharam Sadhuram Jat. The witness stated that when he and Jetharam finished the meal the accused came there with rifle in his hand and told that Malde Sadia came to the point and picked up quarrel for 'chapati' and therefore he had fired a shot from his rifle at Malde's chest. The witness has been cross-examined at length. However, defence has not been able to elicit that no such extra judicial confession was made by the appellant before the witness.

20. On Conjoint reading of depositions of these two witnesses i.e. P.W. 7 Jetharam Sadhuram Jat Exh.34 and P.W. 8 Santkumar Jagumal Jat Exh. 38, it clearly transpires that after commission of the offence, the appellant came to the witnesses and made

extra judicial confession about the incident. The witnesses have stated the exact words used by the accused. Therefore, in our view it is difficult to believe that the appellant did not make extra judicial confession before these two witnesses. The place where the witnesses were taking meal was a place in a talkies where S.R.P. had put their belongings. There is no evidence that public had a free access to that place, even if it was a public place. Normally, general public would not have free access at the place where any police force or other agency deployed to maintain law and order put their belongings as such belongings would include arms and ammunition given to such force. Therefore,it would be difficult to believe that the public had a free access at the place where the incident occurred and at the time of occurrence members of public were present. In these circumstances, it cannot be said that independent witness is not examined to prove extra judicial confession. Moreover, the witnesses before whom extra judicial confession was made cannot be said to be interested witnesses simply because they were discharging their duty with the appellant. There is no evidence to show that these two witnesses had any quarrel with the appellant or they were likely to be benefited in their service by elimination of the appellant. Considering the evidence on record, we are of the view that the appellant had made extra judicial confession before these two witnesses and therefore the learned trial Judge was justified in relying upon extra judicial

confession made by the appellant.

21. In support of his submission with regard to extra judicial confession, learned advocate for the appellant relied on the decisions of the Apex Court in the case of; **(i) Kailesh Potlia V. State of Andhra Pradesh, reported in AIR 1996 Supreme Court 66, (ii) Tarseem Kumar V. The Delhi Administration, reported in AIR 1994 Supreme Court 2585 and (iii) State of Karnataka V. A.B. Nagaraj and another, reported in AIR 2003 Supreme Court 666** and submitted that in view of the law laid down in these decisions the extra judicial confession made by the accused cannot be relied on to convict the appellant for the offence of murder.

22. In the decision of Kailash Potlia (supra) the Supreme Court while dealing with the question of reliability of extra judicial confession, in the facts of the case, found that no ostensible reason was given to take the witness into confidence to confess the crime. In the decision of Tarseem Kumar (supra) the Supreme Court did not accept the extra judicial confession made before stock witness who casually knew accused. In the decision of A.B. Nagraj and another (supra) the extra judicial confession was not accepted as it was made during the detention in forest office and there was no mention of such confession in report given to police. In the instant case, the extra judicial confession was made by the appellant before his colleagues who were

very much known to him and the fact was mentioned in the compliant Exh. 59 given to the police. Therefore, in our view, it cannot be accepted that extra judicial confession is not reliable. Therefore, the decisions relied upon by the appellant cannot be made applicable in the facts of this case.

23. Learned advocate for the appellant also relied on the decision of Supreme Court in the case of **Hem Raj and others V. State of Haryana, reported in AIR 2005 Supreme Court 2110,** wherein the Supreme Court while dealing with the question of omission of independent eye witnesses, has held that **non-examination of independent witness by itself may not give rise to adverse inference against the prosecution. However, when the evidence of alleged eye-witnesses raise serious doubts on the point of their presence at the time of actual occurrence, the unexplained omission to examine the independent witness would assume significance.** In the present case, the witnesses examined by the prosecution are independent witnesses. Simply because the witnesses were serving with the appellant and the deceased, it cannot be said that they were not independent witnesses. The evidence of the said witnesses does not raises any doubt about their presence at the time of actual occurrence. In the facts and circumstances of the case, the above referred decision is not helpful to the appellant.

24. Learned advocate for the appellant submitted

that appellant accompanied the deceased to the hospital and this would be unnatural conduct as an accused of an offence of murder would not accompany the victim to the hospital. He also submitted that conduct of P.W. 7 Jetharam Sadhuram Jat Exh.34 and P.W. 8 Santkumar Jagumal Jat Exh.38 is unnatural as they did not take the appellant to the police station. In our view, these submissions cannot be accepted because immediately after receiving the information about the incident, the witnesses went to the place of incident and saw that the victim was sent to the hospital for treatment and thereafter immediately P.W. 7 Jetharam Sadhuram Jat Exh. 34 lodged the complaint before Veraval City Police Station. The conduct of the appellant accompanying the victim to the hospital with other witnesses can not be said to be unnatural as he must have realised the seriousness of the matter and therefore as a gesture of repentance he made extra judicial confession and went to the hospital with the victim. Hence, this conduct of the appellant and witnesses cannot be said to be unnatural and unbelievable.

25. Learned advocate for the appellant submitted that if the Court is not inclined to accept that the accused was not involved in the offence, then in the alternative, his submission would be that on account of quarrel with the deceased in respect of “Chapati” due to sudden and grave provocation the appellant had fired a shot from the rifle which resulted into death, and therefore, the case of the

appellant would fall under exceptions 1 and 4 to Section 300 of the I. P. Code. In our view, this submission of the learned advocate for the appellant cannot be accepted because the defence of the appellant is of total denial. It is true that according to P.W. 7 Jetharam Sadhuram Jat the appellant made extra judicial confession before him stating that on account of quarrel with deceased Malde Sadia in respect of “Chapati”, he had fired a shot from his rifle. Except this, there is no evidence on record to indicate that there was quarrel between the appellant and deceased Malde Sadia. In order to get benefit of Exceptions No.1 and 4 to Section 300 of the I.P. Code, it is required to establish that an accused whilst deprived of the powers of self control by grave and sudden provocation caused the death of the person who gave provocation and it was committed without premeditation in a sudden fight in the heat of passion upon a sudden quarrel and without the offender's having taken undue advantage. There is no evidence which would indicate that on account of sudden and grave provocation by the deceased, the appellant was deprived of self-control and caused death of the deceased Malde Sadia. Even there is no evidence on record to indicate that the murder was committed in heat of passion upon a sudden quarrel and without having taken undue advantage. Appellant was serving in State Reserve Police Force and he was given the rifle. He must have been given training to operate the weapon. Therefore, the appellant must

be aware about the use and power of the weapon. The deceased was without any weapon. The quarrel for 'chapati' cannot be termed as grave which would provoke the appellant to use such a dangerous weapon. It was also submitted that the appellant had no intention to kill deceased Malde Sadia and therefore the case of the appellant would not fall under Section 302 of the I.P. Code. We are unable to accept this submission because as discussed above the appellant was a personnel of S.R.P. Force having knowledge about nature and result of use of the fire-arm weapon. Moreover, shot was fired on the chest of the deceased which is a vital part of the body. Even assuming that the appellant had no intention to cause death of the deceased, the fact that shot was fired on the chest of the deceased, itself indicates that the appellant was well-aware about the resultant effect of the shot fired from the refile on the chest of the deceased.

26. Learned advocate for the appellant relied on the decisions of the Supreme Court in the case of **Shivappa Buddapa Kolkar alias Buddappagol Vs. State of Karnataka and others, reported in AIR 2004 Supreme Court 5047** and in the case of **Ram Krishna V. State of Madhya Pradesh, reported in AIR 1993 Supreme Court 1360,** on the point that when the accused in a sudden fight without premeditation and preplanning inflicted injuries on head without any intention to cause particular injury, the accused cannot be convicted for the offence punishable u/s 302 of the

I.P. Code but can be convicted under Section 304 Part – II of the I.P. Code. In our view, the quarrel was not of such a grave nature which would compel the accused to use fire-arm and considering the facts and circumstances of the case the appellant was not justified in using the fire-arm. The manner in which the fire-arm was used in the commission of the offence, it cannot be said that the appellant had no intention to cause death of deceased, and therefore, the above decisions can not be made applicable to the facts of this case.

27. Therefore, considering overall evidence on record, we are of the opinion that the prosecution has proved the case beyond reasonable doubt against the appellant. The manner in which the offence was committed by the appellant, we are unable to accept that the offence was committed by grave and sudden provocation on account of quarrel with the deceased in respect of “Chapati”. Hence, the case would not fall under Exceptions 1 and 4 of Section 300 of the I.P. Code. The learned trial Judge was justified in convicting the appellant for the offence of murder of the deceased Malde Sadia punishable u/s 302 of the I.P. Code. Therefore, no interference is warranted in the judgment and order of conviction passed by the trial Court. Hence, the appeal is required to be dismissed.

28. For the foregoing reasons, the present appeal fails and is dismissed. The judgment and order of

conviction and sentence dated 30-9-1997 passed by the learned Additional Sessions Judge, Junagadh, in Sessions Case No.58 of 1995 is confirmed.

(A.L. Dave, J.

(Bankim N. Mehta, J.)

/JVSatwara/